
Rights of Nature in Ecuador

Change of Paradigm or Constitutional Rhetoric

Jordi Jaria i Manzano

Centre for Environmental Law Studies (CEDAT)

Universitat Rovira i Virgili

Tarragona – Catalonia (Spain)

(i) The 'sumak kawsay' as constitutional paradigm

- (i.i) The 'sumak kawsay' is consecrated as a regulatory idea of the Constitution: "a new form of citizenship", as the Preamble puts in.
 - (i.ii) 'Sumak kawsay' means 'good living' in quichua, the most widespread indigenous language in Ecuador.
 - (i.iii) It represents a conception of human life not based on individualism and consumerism, but in community life and respect.
 - (i.iv) For that reason, the introduction of 'sumak kawsay' in the Constitution means a will of going beyond the hegemonic values of the capitalist world-system.
-

(ii) How the rights of nature are incorporated to the Constitution

Article 71. Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.

The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.

(iii) The internal coherence of the Ecuadorian constitutional paradigm, particularly as a model for a change at global level

(iii.i) Wide recognition of social rights; paradigm of European social constitutionalism expanding the rights 'protected' (neoconstitutionalism)

(iii.ii) Dense constitutional discourse; empowerment of executive power (fulfillment of social rights); relying on nature to satisfying social rights.

(iii.iii) 'Sumak kawsay' absorbed by bourgeois ethos (North beats South – Center beats Periphery). NO REAL CULTURAL CHANGE.

(iv) Adequacy, consistency and effectiveness of the rights of nature, confronted with the goals which justify their inclusion in the Constitution

(iv.i) Paradigm of rights vs. respect to nature (arguments based in the extension of rights in the past and in the rights of corporations; dependency on Western ideas).

(iv.ii) Insertion of Ecuadorian economy in process of capitalist accumulation at global level, client politics and pressure on nature.

(iv.iii) Executive power can except constitutional provisions protecting nature and indigenous peoples in order to exploit natural resources of “national interest”.

(v) There are other (more consistent and effective) ways to achieve those goals?

(v.i) Paradigm of rights: based on a idea of an abstract and autonomous human subject in a world of virtually inexhaustible resources.

(v.ii) Does the very idea of rights fits with the kind of interest we try to protect when protecting nature? Nature is not a subject among others, but rather the totality where 'subjects' can live.

(v.iii) Paradigm of responsibilities: In my opinion, we must change the paradigm, not expand the rights. It's a matter of limitation in a world of scarce and vulnerable resources, of acting as responsible 'subjects' in a world under threat

(v.iv) It requires to abandon the utopian pattern where culture of rights was designed, going towards a more pragmatist approach where commitment with social goals and stewardship on nature define a limited notion of rights.

Conclusions:

- 1.The recognition of rights of nature in Ecuadorian constitution is a challenging way to face up the environmental matters at constitutional level.
 - 2.But the paradigm of rights used don't face up the problem soundly. Nature is not a subject... and then not a subject 'of rights'.
 - 3.We can find inspiration in the Ecuadorian proposal (looking at non-Western cultures) to design a way out, from a constitutionalism of rights to a constitutionalism of responsibilities, from (ab)use of nature to respect and care.
-

THANK YOU VERY MUCH
